

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7554

BILL NUMBER: SB 580

NOTE PREPARED: Mar 11, 2009

BILL AMENDED: Feb 23, 2009

SUBJECT: Unauthorized Alien Matters.

FIRST AUTHOR: Sen. Kruse

FIRST SPONSOR:

BILL STATUS: As Passed Senate

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions.

Department of Corrections: This bill requires the Department of Correction to: (1) evaluate the citizenship and immigration status of a committed offender; and (2) notify and assist the United States Department of Homeland Security under certain conditions.

Flight Risk in the Establishment of Bail: The bill provides that the fact that a defendant is a foreign national not lawfully admitted to the United States is a fact relevant to the risk of nonappearance a judicial officer must consider in setting bail.

Sheriff: It requires a sheriff to make a reasonable effort to determine the citizenship or immigration status of certain persons confined in a county jail.

Employment Provisions: The bill also prohibits an employer from knowingly hiring, after September 30, 2009, an unauthorized alien. It establishes an affirmative defense if the employer complied in good faith with the federal employment verification requirements. This bill requires a court to dismiss an action against an employer under certain circumstances.

Attorney General: This bill authorizes the Attorney General to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; (2) verify the work authorization of the alleged unauthorized alien with the federal government; (3) under certain conditions, notify United States Immigration and Customs Enforcement, local law enforcement agencies, and the prosecuting attorney in the county in which an unauthorized alien is employed; and (4) maintain certain records of violation orders.

Department of Workforce Development: The bill requires the Department of Workforce Development to confirm the lawful presence of all noncitizens who apply for unemployment benefits through the Systematic Alien Verification System (SAVE).

Prosecuting Attorney: This bill also provides that a prosecuting attorney who receives notification from the Attorney General may bring a civil action against an employer for knowingly hiring an unauthorized alien. The bill prohibits the prosecuting attorney from filing an action against an employer that verifies the employment authorization of an employee through the E-Verify program.

Whistle-Blower Protection: The bill prohibits an employer from discharging or discriminating against an employee who exercises certain actions afforded under the employment of unauthorized alien provisions.

Safe Haven Policies: This bill prohibits a governmental body from enacting an ordinance, a resolution, a rule, or a policy that prohibits or limits another governmental body from sending, receiving, maintaining, or exchanging information on the citizenship or immigration status of an individual. It allows a person to bring an action to compel a governmental body to comply with the prohibition.

Public Employment: The bill also requires a state agency or political subdivision to verify employees through the E-Verify program.

Contracting Provisions: The bill also prohibits a state agency or political subdivision from entering into or renewing a public contract for services with a contractor unless the contract requires the contractor to verify employees through the E-Verify program. It provides that: (1) a state agency or political subdivision may terminate a public contract for services under certain conditions regarding the knowing employment or retention of unauthorized aliens; and (2) if a public contract for services is terminated, a contractor is liable for actual damages. The bill allows a contractor of a public contract for services to terminate a contract with a subcontractor if the subcontractor employs or contracts with unauthorized aliens.

Penalty Provisions: This bill increases penalties for certain crimes. It also establishes additional penalties for certain crimes. The bill has the following penalty provisions:

- (1) It makes it a Class B misdemeanor to file a complaint, knowing the complaint is false or frivolous, with the Attorney General or the Department of Labor,
- (2) It makes committing false identity statement a Class A misdemeanor,
- (3) Making or distributing a forged instrument is a Class C felony,
- (4) It makes it a Class C felony for a person to knowingly or intentionally make, with the intent to distribute, a document that is not issued by a government entity and that purports to be a government-issued identification, and
- (5) It makes it a Class A misdemeanor to knowingly or intentionally transport or move; and a Class A misdemeanor to knowingly or intentionally conceal, harbor, or shield from detection; an alien, for purposes of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Department of Correction (DOC):* The bill requires DOC staff to verify the legal presence of all individuals incarcerated in DOC facilities and contact the U.S. Department of Homeland Security if an individual's citizenship status is unable to be verified. Additionally, the bill

requires DOC to work with the U.S. Department of Homeland Security in deporting committed offenders who are unlawfully present in the United States. This bill will increase the workload of DOC in order to work with the U.S. Department of Homeland Security to deport criminal unauthorized aliens.

Currently, DOC verifies the legal status of offenders committed to their facilities by asking them an extensive list of questions in interview format. This is done in part to apply for expense reimbursement under the State Criminal Alien Assistance Program (SCAAP). DOC reports that they currently notify U.S. Immigration and Customs Enforcement (ICE) and the U.S. Social Security Administration (SSA) when a determination has been made that an offender is illegally present in the United States.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend on legislative and administrative actions. [DOC reverted \$261,000 to the General Fund at the end of FY 2008.]

Public Employer and Public Contractor Provision: This legislation affects public employers as well as state contracting agencies by requiring state agencies to verify the work eligibility status of all employees hired. The bill also limits public contracting by requiring that a contractor or subcontractor use the E-Verify system as a condition of receiving a contract award. Requiring contracted employers to use verification systems may increase state expenditures on contracts if submitted requests for proposal cost estimates increase to reflect any change in hiring practices and/or wages paid by contractors. Increases in contracting expenses to the state are indeterminable.

The bill states that contractors are liable to the contract-issuing state agency or political subdivision for any damages that may result of a contract cancellation due to the illegal employment of unauthorized aliens. This provision will minimize any increase in expenditures that may result from the cancellation of a contract. To the extent that a contractor challenges the contract cancellation, the workload of the respective state agency and the Attorney General may increase to defend the state.

The E-Verify program is a free Internet-based system that allows employers and state agencies to verify the legal working status of new hires in seconds. Requiring state agencies and state contractors to use the E-Verify system will not increase state expenses, but will slightly increase workload to ensure all employees hired after the effective date are processed. Increases in workload are expected to be minimal due to the processing time necessary for requests.

Unemployment Benefits: The bill requires the Department of Workforce Development (DWD) to utilize the SAVE program to confirm the lawful status of all noncitizens and foreign nationals who apply for unemployment benefits. Fees are charged to entities that request verification with the SAVE program. As enacted by the federal government, effective on October 1, 2008, a uniform rate of \$0.50 will apply to each SAVE request submitted electronically, with an additional \$0.50 charge if the case is referred for additional verification. A rate of \$2.00 will apply to each initial manual verification request submitted via the paper-based form.

In December of 2008, the Indiana Department of Workforce Development reported approximately 261,000 individuals were considered unemployed. Of these individuals, the number of noncitizens and foreign

nationals are unknown. If DWD were to finance SAVE verification for foreign nationals and noncitizens who apply for unemployment benefits, DWD expenditures may increase by \$0.50 per initial request, and by an additional \$0.50 if a case is referred for additional verification (as needed). Additionally, if DWD requests SAVE verification via paper-based form, DWD expenditures may increase by \$2.00 per request. Increases in DWD expenditures will depend on the number of foreign nationals and noncitizens who apply for unemployment benefits as well as administrative decisions regarding fee responsibility and method of submission for SAVE verification.

Office of the Attorney General (AG): [Note: The provisions affecting the employment of unauthorized aliens has an effective date of October 1, 2009.] The AG does not currently investigate complaints regarding employment of unauthorized aliens. The AG currently forwards complaints on employment of unauthorized aliens to either the U.S. Department of Labor or ICE. Consequently, the bill would potentially place several additional administrative responsibilities on the AG.

This bill *allows* the AG to investigate complaints made against employers who are suspected of employing unauthorized aliens. The bill also requires the AG to forward any instances of employers utilizing unauthorized aliens to ICE and allows the AG to notify local law enforcement as well as the prosecuting attorney in the county of jurisdiction of the offense. The bill also requires employers who are found to have illegally employed unauthorized aliens to submit quarterly reports to the AG.

The provisions are expected to increase AG expenditures by approximately \$330,000 per year. This will provide salary, benefits, and overhead costs for one director, one investigator, one analyst, one attorney, and one paralegal to process investigations regarding the employment of unauthorized aliens as well as for the litigation of employees who are wrongfully terminated (see *Whistle-Blower Protection*, below). This cost estimate also provides for the establishment and maintenance of a database that will track the names and addresses of employers who have violated the employment provisions of the bill. Ultimately, the cost of these provisions will depend on legislative and administrative actions. The bill does not contain an appropriation to cover these new expenditures.

Whistle-Blower Protection: This bill requires DOL to investigate complaints made by an employee alleging wrongful termination under specified circumstances. If after an investigation, DOL determines that the employee's termination was wrongful, DOL is required to bring action against the employer through the Attorney General in circuit court. These provisions will increase the workload of DOL, the AG, and state circuit courts.

DOL currently has a division that investigates wrongful terminations when employees report OSHA violations. The staff in this division can process approximately 30 cases per year. The number of wrongful terminations that may be reported to DOL is indeterminable. However, DOL reports that if more than 10 cases require investigation per year, one additional position would be required. After the initial 10 reported cases, it was estimated that one additional staff position would be required for each 30 reported cases. DOL estimates starting salary for this position to be approximately \$35,000 plus benefits. The total cost per year for each additional position is estimated to be approximately \$53,000 per year.

Penalty Provisions: The bill makes the following changes to penalty provisions in current law:

- (1) Counterfeiting or falsely reproducing a driving license with the intent to misrepresent citizenship or immigration status, a Class C felony.
- (2) Filing a false or frivolous complaint with the AG or the DOL, a Class B misdemeanor.

- (3) Knowingly or intentionally offering in writing, accepting, or recording a consular identification for any public purpose commits a Class C infraction, but this offense can be a Class B infraction for a second offense or a Class A infraction for a third or subsequent offense.
- (4) Knowingly or intentionally offering in writing, accepting, or recording an individual taxpayer identification number as a valid form of identification commits a Class C infraction for the first offense, a Class B infraction for a second offense, or a Class A infraction for a third or subsequent offense.
- (5) Making or distributing a forged instrument, a Class C felony.
- (6) Knowingly or intentionally making a false government document, a Class D felony.
- (7) Knowingly or intentionally making a false government document with the intent to distribute, a Class C felony.
- (8) False identity statement, a Class A misdemeanor.
- (9) Transporting an illegal alien, a Class A misdemeanor; however, the offense is a Class D felony for a previous conviction and a Class C felony for a third or subsequent conviction.
- (10) Harboring an illegal alien, a Class A misdemeanor; however, the offense is a Class D felony for a previous conviction and a Class C felony for a third or subsequent conviction.

Additionally, the bill adds that persons who uses false or fictitious information also commit terroristic deception. The bill changes the penalty for terroristic deception from a Class C felony to a Class B felony. It should be noted that state expenditures would increase if an offender is incarcerated in a state prison for a longer period of time due to the penalty enhancements for this offense.

Depending on mitigating and aggravating circumstances, these offenses carry the following penalties: (1) a Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor, (2) a Class C felony is punishable by a prison term ranging from 2 to 8 years, and (3) a Class B felony is punishable by a prison term ranging from 6 to 20 years. The average length of stay in DOC facilities by offense are as follows: (1) Class D felony offenders, approximately 10 months, (2) Class C felony offenders, approximately 2 years, (3) Class B felony offenders, approximately 3.7 years.

Assuming offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

Background Information: DOC reports there were an estimated 475 unauthorized aliens in DOC facilities in FY 2008. The per diem cost to house these individuals was calculated at \$52.61. Total annual costs to DOC to house unauthorized aliens during FY 2008 were approximately \$9.1 M.

Explanation of State Revenues: *Court Fee Revenue:* To the extent that contractors and subcontractors feel that their contracts have been wrongfully terminated, additional civil actions may be filed. Additionally, if the Department of Labor verifies that an employee has been wrongfully terminated for reporting labor violations, additional civil actions may also be filed. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Penalty Provisions: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. Judgments for infractions are deposited into the state General Fund.

The maximum fines by offense are as follows: (1) a Class A misdemeanor is \$5,000, (2) a Class B misdemeanor is \$1,000, (3) Class B, C, and D felonies are \$10,000, (4) a Class C infraction is \$500, (5) a Class B infraction is \$1,000, and (6) a Class A infraction is \$10,000.

Explanation of Local Expenditures: *Local Prosecuting Attorney:* [Note: The provisions affecting the employment of unauthorized aliens has an effective date of October 1, 2009.] This bill authorizes the local prosecuting attorney to initiate proceedings against employers whom the Attorney General determines has illegally employed unauthorized aliens. Increases in workload will depend on the decisions of local prosecuting attorneys to bring civil action against employers with substantiated violations as investigated by the Attorney General. Actual increases in workload are indeterminable.

Court Caseload: Court caseload will increase to the extent that local prosecuting attorneys seek action against employers who have employed unauthorized aliens. The bill also establishes court procedures and requirements for cases involving the employment of unauthorized aliens. Increases in court caseload are indeterminable.

Public Employer and Public Contractor Provision: (See also *Explanation of State Expenditures*, above.) Additionally, to the extent that contractors and subcontractors feel a contract was wrongfully terminated and seek civil redress, local expenditures would increase to defend their interests in court.

Political Subdivision Employment Applicability: The bill requires political subdivisions to utilize the E-Verify program to verify the work eligibility status of all employees hired during FY 2010. This bill will increase the workload of all local units to submit information for verification through E-Verify.

Employment Provisions: Local expenditures may increase to the extent that local law enforcement agencies take action against employers who the Attorney General determines has employed unauthorized aliens. Increases in local expenditures will depend on local law enforcement decisions.

Sheriffs: The provisions will increase the workload of local sheriffs to the extent they detain felony offenders and individuals who operate a vehicle while intoxicated in a county jail. The increase in workload is indeterminable.

Penalty Provision: A Class A misdemeanor is punishable by up to one year in jail and a Class B misdemeanor is punishable by up to 180 days in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase.

Explanation of Local Revenues: This bill requires the Attorney General to inform local law enforcement when an employer has been found to employ unauthorized aliens. If local law enforcement agencies arrest unauthorized aliens as a result of receiving this information, local revenue may increase under the State Criminal Alien Assistance Program (SCAAP). Under SCAAP, the federal government reimburses part of state and local expenditures incurred for correctional officer salary costs for incarcerating undocumented criminal aliens. To qualify, these undocumented criminal aliens must have at least one felony or two misdemeanor convictions for violations of state or local law and be incarcerated for at least four consecutive days during the reporting period.

SCAAP payments are calculated using a formula that provides a relative share of funding to jurisdictions that apply and is based on the number of eligible criminal aliens, as determined by the U.S. Department of Homeland Security. SCAAP payments made to applicants are received as a prorated payment based on costs submitted and qualifying inmates detained. All SCAAP payments must go to a jurisdiction's general fund.

Court Fee Revenue: If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Penalty Provision: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees.

Background Information: The counties that received payments from the SCAAP program in FFY 2008 and the total amounts received are shown in Table A.

Table A: 2008 County SCAAP Awards.	
County	Amount Received
Allen	\$22,220
Grant	\$4,375
Blackford	\$1,733
Hamilton	\$31,615
Noble	\$10,825
Johnson	\$4,071
Hendricks	\$9,557
Cass	\$15,808
Porter	\$1,491
Marion	\$94,637
Total	\$196,332

State Agencies Affected: All.

Local Agencies Affected: All.

Information Sources: Tim Brown, DOC; Indiana Sheriff's Association; ICE; Matt Light and Tom Bodin, Office of the AG; Captain Sherry Beck, ISP; Sean Keefer, DOL; John Ruckelshaus, DWD.

Fiscal Analyst: Bill Brumbach, 232-9559.